



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,609	10/23/2000	Guy Harrison	QSOFT.004A	2965

20995 7590 04/01/2004

KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

INGBERG, TODD D

ART UNIT	PAPER NUMBER
----------	--------------

2124

DATE MAILED: 04/01/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/695,609

Applicant(s)

HARRISON, GUY

Examiner

Todd Ingberg

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5.6
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

Claims 1 – 72 have been examined.

### *Priority*

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1 - 72 of this application. 60/167,326. This rejection can be overcome by an affidavit which perfects the claim to priority. The affidavit must draw a link between the product literature provided on **Instance Monitor** (List of Materials 5 – 9) and the source code provided. Furthermore, the enablement of the source code must be addressed. The statements that the source code provided has testing and found reliable for release as disclosed in the Instance Monitor documentation provided. Current effective filing date is **October 23, 2000**. If successful the priority date of October 24, 1999 will be established.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation *efficiently* can not be quantified.

Claim 47

A monitoring system for monitoring a computer program, the monitoring system comprising: a display having a window; an on-screen graphic, displayed in the window and representing a plurality of performance statistics corresponding to a plurality of components of a computer

Art Unit: 2124

program; and a severity protocol, associated with the on-screen graphic and configured to set a graphical attribute of the on-screen graphic, wherein the graphical attribute efficiently communicates to a user, the potential or actual existence of performance inhibitors associated

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 72 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. Quest Software's commercial product Instance Monitor™ version 1.0. The commercial product is released June 18, 1999 as described in the Press Release "Quest Touts Breakthrough Software To Stop Oracle Bottlenecks", Computergram International.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 16, 24 – 58, 66 - 72 are rejected under 35 U.S.C. 102(b) as being anticipated by the commercial product **HP** OpenView as documented in the book "Focus on OpenView A Guide to Hewlett-Packards Network and Systems Management Platform", by Nathan J. Muller published 1995.

Art Unit: 2124

**Claim 1**

**HP** anticipates a computer program for monitoring the performance of an application by presenting a visual map of the underlying architectural components of the application and the data flow between the architectural components, the computer program comprising software configured to display a visual map having on-screen graphics representing components and data flows of an application, and wherein at least some of the on-screen graphics representing components having similar functionality are organized into groups while other on-screen graphics represent the data flowing between the groups, thereby providing a user with a snapshot overview of the performance of the application. (**HP**, monitoring a network on pages 21 to 41 and monitoring pages 71 – 116 and pages 58 – 71 anticipate the setting and monitoring of a hierarchical threshold system with severity levels – of the system being monitored and the action defined on page 72 and color change on page 58).

**Claim 2**

The computer program of Claim 1, further comprising panels, each panel being associated with one or more of the groups of on-screen graphics representing components having similar functionality, and wherein one or more of the other onscreen graphics represents the data flowing between the panels. (**HP**, pages 80 – 81).

**Claim 3**

The computer program of Claim 1, wherein the on-screen graphics are grouped within the visual map to resemble the underlying architecture of the application. (**HP**, page 81).

**Claim 4**

The computer program of Claim 1, wherein the application comprises one or more database management systems. (**HP**, pages 78).

**Claim 5**

The computer program of Claim 1, wherein the application comprises one or more servers. (**HP**, pages 75).

**Claim 6**

The computer program of Claim 1, wherein the application comprises one or more operating systems. (**HP**, pages 78).

Art Unit: 2124

**Claim 7**

The computer program of Claim 1, wherein the application comprises one or more input/output devices. (HP, pages 75 different users).

**Claim 8**

The computer program of Claim 1, wherein the application comprises one or more computer accessible storage mediums. As per claim 5.

**Claim 9**

The computer program of Claim 1, wherein the application comprises one or more data storage arrays. (HP, MIB as per above claim 1 and pages 81, 242 - 250).

**Claim 10**

The computer program of Claim 1, wherein the application comprises one or more system servers. (HP, page 67).

**Claim 11**

HP anticipates a method of monitoring a computer program having a plurality of components, the method comprising: grouping a plurality of performance data to form an on-screen graphic, wherein the performance data represents the performance of a plurality of program components; and changing a graphical attribute of the on-screen graphic when a value of the group of performance data corresponds to a threshold. (HP, monitoring a network on pages 21 to 41 and pages 58 – 71 anticipate the setting and monitoring of a hierarchical threshold system with severity levels – of the system being monitored and the action defined on page 72 and color change on page 58).

**Claim 12**

The method of Claim 11, wherein the on-screen graphic comprises a hierarchy of graphical caution levels, and wherein the graphical attribute is changed according to the hierarchy.

See the rejection of claim 11.

**Claim 13**

The method of Claim 11, wherein the on-screen graphic comprises a dataflow.

(HP, pages 26 and 36).

**Claim 14**

Art Unit: 2124

The method of Claim 11, wherein the on-screen graphic comprises alphanumeric text or symbols. (HP, pages 26 and 36).

**Claim 15**

The method of Claim 11, wherein the on-screen graphic comprises a panel. (HP, pages 26 and 36).

**Claim 16**

The method of Claim 11, wherein the on-screen graphic comprises an icon. (HP, pages 26 and 36).

**Claim 24**

The method of Claim 11, wherein at least one of the plurality of program components comprises a process. (HP, pages 26 and 36).

**Claim 25**

The method of Claim 11, wherein at least one of the plurality of program components comprises a flow of data within the program. (HP, pages 26 and 36).

**Claim 26**

The method of Claim 11, wherein at least one of the plurality of program components comprises a memory structure. A memory structure is inherent to a program also called a data structure since programs are running and monitoring is present data structures are inherently present. (HP, pages 26 and 36).

**Claim 27**

The method of Claim 11, wherein at least one of the plurality of program components comprises a computer accessible storage medium. (HP, pages 26 and 36).

**Claim 28**

The method of Claim 11, wherein the graphical attribute comprises at least one of size, color, texture, text, blinking, existence, speed, acceleration, value, sound, rotation, animation, and content (HP page 58 change color).

**Claim 29**

The method of Claim 11, wherein the computer program comprises one or more database management systems. See the rejection for claim 4.

**Claim 30**

Art Unit: 2124

The method of Claim 11, wherein the computer program comprises one or more servers. See the rejection for claim 5.

**Claim 31**

The method of Claim 11, wherein the computer program comprises one or more operating systems. See the rejection for claim 6.

**Claim 32**

The method of Claim 11, wherein the computer program comprises one or more input/output devices. See the rejection for claim 7.

**Claim 33**

The method of Claim 11, wherein the computer program comprises one or more computer accessible storage mediums. See the rejection for claim 8.

**Claim 34**

The method of Claim 11, wherein the computer program comprises one or more data storage arrays. See the rejection for claim 9.

**Claim 35**

The method of Claim 11, wherein the computer program comprises one or more system servers. See the rejection for claim 10.

**Claim 36**

**HP** anticipates a method of monitoring a application program having a plurality of components, the method comprising: grouping a first plurality of performance data to form a first on-screen graphic, wherein the first performance data represents the performance of a first plurality of program components of an application program; grouping a second plurality of performance data to form a second on screen graphic, wherein the second performance data represents the performance of a second plurality of program components of the application program; grouping the first and second on-screen graphics into a third on-screen graphic; and changing a graphical attribute of one of the first and second on-screen graphics when a value of the corresponding group of performance data corresponds to a threshold. See the rejections for claims 1 and 11.

**Claim 37**

**HP** anticipates a method of monitoring the performance of a computer program having a plurality of components; the method comprising: grouping a first plurality of performance data



Art Unit: 2124

to form a first on-screen graphic, wherein the first performance data represents the performance of a first plurality of program components of a computer program; grouping a second plurality of performance data to form a second on screen graphic, wherein the second performance data represents the performance of a second plurality of program components of the computer program; representing data flowing from the first plurality of program components to the second plurality of program components with an third on-screen graphic; and changing a graphical attribute of the third on-screen graphic when a value of the data flow corresponds to a threshold. See the rejections for claims 1 and 11.

**Claim 38**

**HP** anticipates a method of alerting an user to a potential problem within an application program; the method comprising: accessing with a monitoring program, performance data representing at least one performance parameter of a monitored program; comparing the at least one performance parameter to a threshold value associated with the at least one performance parameter; and accessing a hierarchical set of severity levels to alert a user of the monitoring program, wherein the user is alerted with a first severity level when a threshold value is met and a lesser severity level when the threshold value is not met. (**HP**, pages 58 – 71 anticipate the setting and monitoring of a hierarchical threshold system with severity levels – of the system being monitored and the action defined on page 72)

**Claim 39**

The method of Claim 38, wherein each of the hierarchical set of severity levels defines an action to be performed by the monitoring program. As per claim 38.

**Claim 40**

The method of Claim 39, wherein the action comprises a message to the user. As per claim 38.

**Claim 41**

The method of Claim 39, wherein the action comprises a change in an attribute of an on-screen graphic of the monitoring program. As per claim 38.

**Claim 42**

The method of Claim 39, wherein the action comprises a presentation of additional information corresponding to the monitored program. As per claim 38.

**Claim 43**

Art Unit: 2124

The method of Claim 38, wherein the hierarchical set of severity levels includes a middle severity level between the lesser severity level and the first severity level. As per claim 38.

**Claim 44**

The method of Claim 38, wherein meeting the threshold value includes the performance parameter being equal to or greater than the threshold value. As per claim 38.

**Claim 45**

The method of Claim 38, wherein the user selects the threshold value. As per claim 38.

**Claim 46**

The method of Claim 38, wherein the user selects one of the hierarchical set of severity levels as the first severity level, and selects another of the hierarchical set of severity levels as the lesser severity level. As per claim 38.

**Claim 47**

**HP** anticipates a monitoring system for monitoring a computer program, the monitoring system comprising: a display having a window; an on-screen graphic, displayed in the window and representing a plurality of performance statistics corresponding to a plurality of components of a computer program; and a severity protocol, associated with the on-screen graphic and configured to set a graphical attribute of the on-screen graphic, wherein the graphical attribute efficiently communicates to a user, the potential or actual existence of performance inhibitors associated with the computer program. See the rejections for claims 1 and 11.

**Claim 48**

The monitoring system of Claim 47, wherein the computer program comprises one or more database management systems. See the rejection for claim 4.

**Claim 49**

The monitoring system of Claim 47, wherein the computer program comprises one or more servers. See the rejection for claim 5.

**Claim 50**

The monitoring system of Claim 47, wherein the computer program comprises one or more operating systems. See the rejection for claim 6.

**Claim 51**

Art Unit: 2124

The monitoring system of Claim 47, wherein the computer program comprises one or more input/output devices. See the rejection for claim 7.

**Claim 52**

The monitoring system of Claim 47, wherein the computer program comprises one or more computer accessible storage mediums. See the rejection for claim 8.

**Claim 53**

The monitoring system of Claim 47, wherein the computer program comprises one or more data storage arrays. See the rejection for claim 9.

**Claim 54**

The monitoring system of Claim 47, wherein the computer program comprises one or more system servers. See the rejection for claim 10.

**Claim 55**

The monitoring system of Claim 47, wherein the on-screen graphic comprises alphanumeric text or symbols. See the rejection for claim 14.

**Claim 56**

The monitoring system of Claim 47, wherein the on-screen graphic comprises a dataflow. See the rejection for claim 13.

**Claim 57**

The monitoring system of Claim 47, wherein the on-screen graphic comprises a panel. See the rejection for claim 15.

**Claim 58**

The monitoring system of Claim 47, wherein the on-screen graphic comprises an icon. See the rejection for claim 16.

**Claim 66**

The monitoring system of Claim 47, wherein at least one of the plurality of components of the computer program comprises a process. See the rejection for claim 24.

**Claim 67**

The monitoring system of Claim 47, wherein at least one of the plurality of components of the computer program comprises a flow of data within the computer program. See the rejection for claim 25.

Art Unit: 2124

**Claim 68**

The monitoring system of Claim 47, wherein at least one of the plurality of components of the computer program comprises a memory structure. See the rejection for claim 26.

**Claim 69**

The monitoring system of Claim 47, wherein at least one of the plurality of components of the computer program comprises a computer accessible storage medium.

See the rejection for claim 37.

**Claim 70**

The monitoring system of Claim 47, wherein the severity protocol comprises a hierarchy of graphical caution levels, and wherein the graphical attribute is changed according to the hierarchy. See the rejection for claim 38.

**Claim 71**

The monitoring system of Claim 47, wherein the graphical attribute further comprises at least one of size, color, texture, text, blinking, existence, speed, acceleration, value, sound, rotation, animation, and content. See the rejection for claim 28.

**Claim 72**

The monitoring system of Claim 47, wherein the performance inhibitors comprise at least one of dataflow bottlenecks, and improperly or inefficiently configured devices, protocols, variables, software modules, or flags. See the rejection for claim 13.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17 – 23 and 59 – 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over HP OpenView in view of Official Notice that icons are well known to exist for shapes to

Art Unit: 2124

represent the claimed meaning of symbols/ therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to represent the meanings with icons.

HP OpenView on pages 212 – 214 teaches the product OpenView allows user's to customize their displays. What HP does not teach is limiting the icons to specific shapes and sizes.

**NOTE:** the OpenView reference is more flexible than the invention.

**Claim 17**

The method of Claim 16, wherein the icon comprises a process icon.

**Claim 18**

The method of Claim 16, wherein the icon comprises a memory icon.

**Claim 19**

The method of Claim 16, wherein the icon comprises a disk icon.

**Claim 20**

The method of Claim 16, wherein the icon comprises a meter icon.

**Claim 21**

The method of Claim 16, wherein the icon comprises a rotating icon.

**Claim 22**

The method of Claim 16, wherein the icon comprises a timer icon.

**Claim 23**

The method of Claim 16, wherein the icon comprises a chart or graph icon.

**Claim 59**

The monitoring system of Claim 58, wherein the icon comprises a process icon.

See the rejection for claim 17.

**Claim 60**

The monitoring system of Claim 58, wherein the icon comprises a memory icon.

See the rejection for claim 18.

**Claim 61**

The monitoring system of Claim 58, wherein the icon comprises a disk icon.

See the rejection for claim 19.

Art Unit: 2124

**Claim 62**

The monitoring system of Claim 58, wherein the icon comprises a meter icon.

See the rejection for claim 20.

**Claim 63**

The monitoring system of Claim 58, wherein the icon comprises a rotating icon.

See the rejection for claim 21.

**Claim 64**

The monitoring system of Claim 58, wherein the icon comprises a timer icon.

See the rejection for claim 22.

**Claim 65**

The monitoring system of Claim 58, wherein the icon comprises a chart or graph icon.

See the rejection for claim 23.

***Examiner's Comments***

9. The Examiner notes it is possible the UNDO monitoring features might be novel over prior art of record. This feature is currently unclaimed.

***Correspondence Information***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is (703) 305-9775. The examiner can normally be reached during the following hours:

Monday	Tuesday	Wednesday	Thursday	Friday
6:15 – 1:30	6:15- 3:45	6:15 – 4:45	6:15-3:45	6:15-130

This schedule began December 1, 2003 and is subject to change.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on (703) 305-9662. Please, note that as of August 4,

Art Unit: 2124


2003 the **FAX number** changed for the organization where this application or proceeding is assigned is **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

Post Office Box 1450

Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.



**Todd Ingberg**  
Primary Examiner  
Art Unit 2124  
March 22, 2004